VIRGINIA LAW REGISTER

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Chief Justice White.

The death of Chief Justice White is a great loss to the Nation. We think we may say without fear of successful contradiction that he was the greatest jurist who has occupied that exalted position since John Marshall. He was an intellectual giant as well as a man of large physique, and a great lawyer in every sense of the word. Born in Louisiana; a Confederate soldier; a Judge on the Supreme Court of his native state; United States Senator. After three years' service in that capacity he was appointed in 1894 to the Supreme Court by President Cleveland. Within a very short while it became evident that a master mind and a splendid personal character had come into the deliberations of our greatest court. A student of Chief Justice Marshall's opinions, it was apparent that he was modeling his theories of our Government upon that jurist's ideas and whilst those who differed with him regretted this course, no one ever questioned his absolute sincerity of purpose or doubted the man's belief in his opinions. In some respects he was as great a leader out of confusion caused by new and untried laws as Marshall was in the formation of the doubtful views of men's minds as to the construction of our Constitution. When Justice White came upon the Bench of the Supreme Court it looked as if no more great constitutional questions could arise. The many doubtful points which the Civil War and the horrors of Reconstruction had raised, had been cleared away—whether rightfully or wrongfully—we will not say—but at any rate had been settled. Corporations were small and very few questions of a constitutional nature seemed to remain in respect to these bodies. Trusts were unknown. And yet in a few years after Justice White took his seat the court was flooded with suits involving

every possible shade of construction of constitutional rights and the Fourteenth Amendment became a very *fows malorum.* The Tobacco Trust; The Standard Oil Trust; The government of combinations in restraint of trade by congressional enactment; Income tax questions; Colonial Questions—and later as the World War called upon the court to decide the validity of the selective service and espionage acts and of many others adopted in that period of our National crisis. To the decision of these questions, the Chief Justice brought not only his superbly trained judicial intellect, but the saving grace of that most uncommon virtue, common sense. His "rule of reason" awoke the public mind to the fact that law ought to be interpreted as constructive and not as destructive, and that logic was not the only rule upon which to base judicial opinions. The reason and the unreasonableness of combinations were both carefully weighed and the evil to be cured was not allowed to overweigh the good which was the result of certain combinations. His mind was of the clearest, most logical, kind and his opinions are as convincing as they are clear. He was a great dissenter—never hesitating to differ with his brethren and thus evincing the fact that he did not believe the rule of a majority was always the rule of right. The most remarkable thing about the Chief Justice was his wonderful memory. He rarely ever read his opinions, but delivered them extemporaneously with much feeling and sometimes with a touch of oratory seldom seen in an Appellate Court of such dignity. Now and then he would flash out a vigorous expression—or give a touch of humor—which would not be found in the written opinion—more's the pity. His strong federalistic tendencies were nowhere so clearly shown as in the last opinion he delivered—being his dissenting opinion in the Newberry Case—which followed his general adherence to Marshall's ideas that the strong arm of the Federal Government ought to control its affairs. He declared that the proposition that Congress could not regulate the election of United States Senators was a suicidal one. Here the Chief Justice's usually clear and logical mind seemed to have overlooked the fact that the "election of Senators" was not involved in the Newberry Case, but merely the right of a political party to choose its candidate and

the right of the state to regulate the spending of money in such a case.

The Chief Justice's selection by President Taft was not only a high tribute to his worth and ability but an equally high testimony to President Taft's own sense of duty to his country and to the high cause of justice. To select a Democrat—an ex-Confederate Soldier—to the highest office in his gift evinced a patriotism higher than party—a sense of duty greater than any other President has ever shown in this respect and today as we sorrow over the dead we should pay our tribute to the living and say to the ex-President that his choice proved his wisdom as well as his splendid power to rise superior to every other consideration than that of giving to the country its best talent and its worthiest men. All honor is due to ex-President Taft for the care and ability and lack of partisan spirit in the selection of judges. No President was ever moved by higher motives or succeeded better in the class of men he chose for the judiciary.

Chief Justice White's private life was of peculiar sweetness and charm. Plain, simple, unpretentious, kindly, good-natured, happy—he was the good citizen—the loving husband and an humble, sincere Christian. Another great name is inscribed upon the imperishable tablets of American History. May President Harding be as equally fortunate in the selection of his successor of the Chief Justice as President Taft was in his selection.

We cannot forbear closing this article without referring to a touching instance which came under our personal observation at the great Confederate Reunion in Washington some years ago. Chief Justice White was in the reviewing stand with President Wilson as the march of the Old Soldiers of the Confederacy went by. The Louisiana division came in sight and with it the survivors of the regiment in which Chief Justice White had served. As the head of the column came near the reviewing stand he leaped over the railing, walked into the line and passed the President and his party keeping step with his old comrades and waving his hat like a school boy. There was much cheering and the writer confesses that he felt something close akin to moisture on his cheek.

The Albemarle Bar, V.

In the years from 1809 to 1825 occurs a large number of names, most of whom are merely names now. Four of them attained prominence after they left the Albemarle Bar. One of them, John S. Barbour, was only an occasional practitioner, being a resident of Culpeper. He was educated at William and Mary, studied law, was aide-de-camp to General Madison in the war of 1812; served in the State Legislature, was a member of 20th-21st and 22nd Congresses and of the Virginia Constitutional Convention of 1829-30.

Archibald Austin qualified in Albemarle in 1813 and practiced in that and adjacent counties for over forty years; was a member of the Legislature from Buckingham County and member of the 15th Congress. He died in 1837.

William Taylor was a native of Alexandria, studied law and moved to Rockingham. Was a member of the Albemarle Bar in 1809, and was a member of the 28th and 29th Congresses. Died in Washington in 1846.

Charles Downing was a member of the Albemarle Bar for several years, qualifying in 1815, and living in Charlottesville. He subsequently moved to Florida and was a delegate from what was then the Territory of Florida. in the 25th and 26th Congresses.

More than one of the members of the Bar in that period attained local celebrity. Briscoe G. Baldwin,—who, however, resided in Staunton—a man of great prominence in the State, a member of the Legislature for several terms—of the Convention of 1829-30 and for a long time one of the most learned and able judges of our Supreme Court of Appeals, practiced regularly at this Bar.

Valentine W. Southall was a man prominent in the County. A lawyer of unusual ability, an advocate of unequalled strength before juries, and well nigh the absolute ruler of the old County Court. He was the grandson of Valentine Wood and Lucy Henry, his wife—the latter being a sister of Patrick Henry. He was in business in Washington City but afterwards studied law and rapidly took a leading position at the bar. He was the at-

torney for the Con monwealth for the County from 1829 and until in 1850 this office became elective under the Constitution of 1850, he being a member of the convention that framed that Constitution. He was a stern, somewhat austere man, who commanded the respect and to some extent the awe of his clients. He was in spite of this a very popular man and represented the County in the Legislature for several terms and was Speaker of the House of Delegates. He was a Union man and as such elected to the convention which passed the ordinance of Secession. Mr. Janney, the President of that convention, became ill very soon after its organization and Mr. Southall acted as President during most of its sessions. The secession of the State was such a source of grief to him it was thought that it really shortened his life, as he died very soon after the ordinance was passed and the convention adjourned.

He married twice, his first wife being the daughter of Alexander Garrett, and the second a daughter of James P. Cocke, by whom he had three sons and several daughters. S. V. Southall, one of his sons, became one of the ablest lawyers at the Albemarle Bar. Another, James C. Southall, was an editor and scientist of distinction.

Many stories are told of his ability and power. It is said he once advised a young lawyer always to fix his fee when the client first came to him. "He is angry then," he said; "or fix it just before the case is called. He is scared then."

He used to tell of a sturdy mountaineer who came to him on a busy courtday and laid down a twenty dollar gold piece on his desk. "Mr. Southall," he said, "I want you to sue Bill Sprouse," and then walked out. Quite a time elapsed and the client not appearing again Mr. Southall met him on the court green one day and calling him by name said, "You paid me a retainer some months ago to sue Bill Sprouse. I was too busy to talk to you then and expected you to call later and tell me your case. Now what do you want to sue Sprouse for?"

"Wa-al, Mr. Southall," replied the mountaineer, "I didn't think I need tell you more than to pay you to sue him and let you fix it up. Why, d—mn him! I jest wanted you to sue him *for spite!*"

Another name of more than local fame was that of Gen. William F. Gordon, the greater part of whose long and useful life was spent in Albemarle. Born at Germanna, he moved to Albemarle prior to 1813, having qualified at the bar of that County in 1809. He married as his second wife Elizabeth Lindsay, the daughter of Col. Reuben Lindsay, of Albemarle. It was the writer's good fortune to have known this splendid old lady, whose brilliant intellect, force of character and high literary attainments made her the fitting helpmeet of her distinguished husband. She had been the friend and intimate associate of Mr. Jefferson's daughters and frequently visited Monticello. Her stories of the giants of those days—Jefferson and Madison and Monroe—all of whom she knew well—were exceedingly interesting, and it is to be deeply regretted they have not been preserved.

Young Gordon soon took a prominent stand at the Albemarle Bar. He was appointed attorney for the Commonwealth in 1812, but only held the office a year. From 1818 to 1829 he was almost continuously a member of the House of Delegates, in which body he rendered most valuable assistance to Mr. Jefferson in his struggle for the establishment of the University of Virginia. In the Legislature from this County during his service were William C. Rives, Hugh Nelson, and Thomas Mann Randolph, Mr. Jefferson's son-in-law and afterwards Governor of Virginia. Later on, in 1830, Gen. Gordon was a member of the State Senate, and also served as Brigadier General of the 3rd Brigade of Virginia Militia. He was a member of the Virginia Constitutional Convention of 1829 and elected to the Congress of the United States prior to his election to that Convention. He was a Jacksonian Democrat, but a strong States' Right man. He was the originator of the Sub-treasury of the National Government. He served with distinction during three Congresses, but was defeated in 1834, having abandoned the Jacksonian wing of the party, considering it to have abandoned its principles.

He returned to his practice at the bar and led on his fine plantation that life not unusual to the Virginia lawyer, which combined the pursuit of agriculture with that of the law. He

found in literature the delight and solace of his later years and was no mean student of letters and political philosophy and history. His last public appearance on the hustings was in opposition to the proposition to establish in Virginia a free school system, and he was successful in his fight. He died at Edgeworth, his home in Albemarle County, in August 1858.

General Gordon was an able lawyer and superb advocate. His speeches both as a lawyer and statesman were cogent, eloquent and given through the vehicle of a most charming voice.

One of his sons, his namesake, was sometime Clerk of the House of Delegates and of the Secession Convention. Another son, George, gave his life to his native Commonwealth at the Battle of Malvern Hill. George was the father of that brilliant young poet and orator, James Lindsay Gordon, whose early death removed from us one of the most lovable and promising of Virginia's younger sons. Armistead C. Gordon of Staunton is another son of George Gordon. His fame as a writer and poet and his ability as a lawyer and speaker evince the fact so often shown in Virginia, that talent is handed down from generation to generation, and that the old Commonwealth yet produces worthy sons of illustrious sires. His life of his grandfather, the subject of our sketch, is not only a most valuable contribution to the political history of our country, but a most delightful and entertaining volume.

A daughter of General Gordon married the distinguished jurist and lawyer Judge William J. Robertson of Charlottesville.

Judge Richard H. Field of whom we have spoken in a previous article qualified to practice in Albemarle in 1813 and two years later John L. Marye of Fredericksburg—the ancestor of a future Lieutenant Governor and Auditor of Virginia—became a practitioner at the same Bar. In 1820 William C. Rives entered into the practice in this County. A life so distinguished cannot be written in the small space reserved for this number and will form the subject of our next article.

It has been reserved to the very able attorney for the Commonwealth for Louisa County to get the benefit of what is prac-

Right of the Counties to Issue Road Bonds.

tically a declaratory judgment, and he deserves the thanks of every good citizen interested in good roads for his action. The county of Louisa, like so many other counties of the State, had an Act (approved March 16th, 1920—Acts 1920, p. 308-9) passed authorizing the county to borrow money and issue bonds for a sum not exceeding $200,000.00, for the purpose of enabling the county to obtain the benefit of the statute contained in Acts 1920, p. 268, entitled "An Act to anticipate by counties or otherwise, the construction of the State Highway System." A question was raised as to the constitutionality of the two Acts and the contention made that the Board of Supervisors of Louisa County had no right to issue any bonds under the first of said Acts, nor to make any levy upon property in the county under its provisions because of the unconstitutionality of said Act. An appeal was taken to the Circuit Court which held the Act unconstitutional and the Board appealed. No appearance was had by the prosecutor of the appeal in the court below. Our Supreme Court held that both of the Acts were constitutional and valid—thus finally settling a question liable to be raised in many of the counties of the State. The decision is of vast importance and was watched for by a great many lawyers in the state and by one or more "Bond" lawyers out of the State, who were in doubt as to whether they should advise their clients to float these bonds.

We do not exactly know how our friend Bibb worked his plan, but it worked and we congratulate him on the result.

Why Seal?

Can any one give us any good, valid and sufficient reason why we should hold on to the distinction between "sealed" and "unsealed" instruments? Why should the language "Witness my hand *and seal,*" with a scroll or rather scrawl, after the signature of the grantor or obligor give a greater dignity to a paper than one simply signed "Witness my hand;" and why should it be that where the word "seal" was left out in the above language and yet the scroll or scrawl attached to the name, the paper be-

comes an "unsealed" instrument? We already feel the shudder of horror which goes over the frame of some of our legal brethren—especially those educated under the old regime—as we were—at the mere mention of the question. And yet let us seriously and soberly sit down to answer it. "It gives greater importance, more dignity to the instrument and supposes greater care in its execution," one replies. Does it? What importance can we now-a-days attach to a scrawl at the end of a name, even though "recognized in the body of the instrument?" Wherein is the dignity? And can any one seriously say that any person in the State of Virginia today exercises greater care in signing a "sealed" than in signing an "unsealed" instrument? What other answer can any one give? We would like to hear. And why should a scrawl after a name and the use of the words "Witness my hand and seal" make a difference and often a very dangerous difference as to the Statute of Limitations. Why ten years in one case and five in the other except that occasionally a poor chap is caught napping and forgets to put the magic words "and seal" in the body of the instrument and then puts a scrawl after the name and thinks when his debtor has signed it the ten years applies. With the most abject apologies to the shades of the great common lawyers and with the prayer that the ghost of our dear and beloved preceptor "old John B." will not rise up against us, we again ask "Why?"

All the progressive States of the Union have abolished "private seals." Why should we hold on to them? Answers are requested.

Municipal Taxation of Professional Men.

We are reprinting under Miscellany in this issue a communication from George Bryan of the Richmond Bar which appeared in the Richmond Times-Dispatch of April 16, concerning municipal taxation of professional men. The subject has aroused a great deal of interest in Richmond. The professional men are making well founded complaints against the burden of the impost upon them and especially the fact that they are singled out for what is in effect a municipal income tax—in the teeth of the statute. It

seems to us that Mr. Bryan has made out a clear case for the professional men and conclusively shown that the Richmond ordinance taxing them upon their receipts should be repealed. We understand that application will be made to the General Assembly of 1922 to make the already plain statute of 1916 still plainer and to read substantially as follows:

> "Section 11. On income, as defined in this schedule, the tax shall be one per centum, and no city, town or county shall levy or assess any *graduated* tax on incomes, *earnings,* or *receipts* for municipal or county purposes, and any provision of any city or town charter in conflict with this act is hereby repealed * * *" (New matter in italics.)

The physicians of Richmond took an active part in the movement for relief, but from current reports the lawyers did very little. This brings to mind that the members of the legal profession are often inert and indifferent to matters vitally affecting them as members of a profession. This can probably be explained by the fact that they are continually battling to the point of weariness for the rights of others and this tends to the neglect of their own. For instance the General Assembly of Virginia, certainly a majority of the members of which, if we are not mistaken, are lawyers, have done very little of a constructive nature in the interest of their profession as such or its members. The only exception in the long series of years of legislative indifference to just claims of lawyers is the present section 3429 of the Code of 1919, in regard to the lien of an attorney. This was fathered by Senator M. J. Fulton, now a member of the Richmond bar, and was passed by the legislature of 1904. The rest is silence.

The protest of the professional men of Richmond was not made in vain. The Board of Aldermen declined to pass the Budget containing the high tax provision proposed by the Finance Committee, and a substituted provision was adopted which practically cuts in half the tax originally proposed, namely, by reducing the minimum tax from $20 to $10 and imposing a tax of one per cent. upon net receipts.

B. S.